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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

MALIBU MEDIA, LLC,

Plaintiff,

v.

JOHN DOE subscriber assigned IP address  
24.0.207.93,

Defendant.

Civil Action No. 2:17-cv-01239-MCA-LDW

**ANSWER TO COMPLAINT**

Defendant, John Doe subscribed assigned IP address 24.0.207.93 (hereinafter “Defendant”), through his counsel, herein responds to the Complaint of Plaintiff, Malibu Media, LLC, as follows:

**Introduction**

1. Paragraph 1 of the Complaint is a statement of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiff’s has filed claims for alleged violations of the United States Copyright Act, but denies having committed any such violations.
2. Defendant denies the allegations contained in Paragraph 2 of the Complaint.
3. Defendant is without knowledge or information sufficient to admit or deny Paragraph 3 of the Complaint and therefore leaves Plaintiff to its proofs.

### **Jurisdiction And Venue**

4. Paragraph 4 of the Complaint is a statement of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 4.

5. Defendant denies the allegations contained in Paragraph 5 of the Complaint, except to admit that Defendant resides in the State of New Jersey.

6. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

7. Paragraph 7 of the Complaint is a statement of law to which no response is required. To the extent a response is required, Defendant admits that Defendant resides in the State of New Jersey, denies participating in the events alleged or omissions set forth in the complaint, and is without knowledge or information sufficient to admit or deny the remainder of Paragraph 7, leaving Plaintiff to its proofs.

### **Parties**

8. Defendant is without knowledge or information sufficient to admit or deny Paragraph 8 of the Complaint, and leaves Plaintiff to its proofs.

9. Defendant is without knowledge or information sufficient to admit or deny Paragraph 9 of the Complaint, and leaves Plaintiff to its proofs.

10. Defendant is without knowledge or information sufficient to admit or deny Paragraph 10 of the Complaint, and leaves Plaintiff to its proofs.

### **Factual Background**

*1. Defendant Used the BitTorrent File Distribution Network To Infringe Plaintiff's Copyrights.*

11. No factual allegations are alleged against Defendant in Paragraph 11 of the Complaint. As such, Defendant is not obligated to admit or deny the allegations in this paragraph.

To the extent this paragraph contains factual allegations against Defendant, Defendant denies such allegations.

12. No factual allegations are alleged against Defendant in Paragraph 12 of the Complaint. As such, Defendant is not obligated to admit or deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against Defendant, Defendant denies such allegations.

13. No factual allegations are alleged against Defendant in Paragraph 13 of the Complaint. As such, Defendant is not obligated to admit or deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against Defendant, Defendant denies such allegations.

14. No factual allegations are alleged against Defendant in Paragraph 14 of the Complaint. As such, Defendant is not obligated to admit or deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against Defendant, Defendant denies such allegations.

15. No factual allegations are alleged against Defendant in Paragraph 15 of the Complaint. As such, Defendant is not obligated to admit or deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against Defendant, Defendant denies such allegations.

16. No factual allegations are alleged against Defendant in Paragraph 16 of the Complaint. As such, Defendant is not obligated to admit or deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against Defendant, Defendant denies such allegations.

17. No factual allegations are alleged against Defendant in Paragraph 17 of the Complaint. As such, Defendant is not obligated to admit or deny the allegations in this paragraph. To the extent this paragraph contains factual allegations against Defendant, Defendant denies such allegations.

18. Defendant denies the allegations contained in Paragraph 18 of the Complaint.

19. Defendant denies the allegations contained in Paragraph 19 of the Complaint.

20. Defendant denies the allegations contained in Paragraph 20 of the Complaint to the extent that such allegations relate to or implicate any actions of Defendant. Defendant is without knowledge or information sufficient to admit or deny the remainder of Paragraph 20, and leaves Plaintiff to its proofs.

21. Defendant denies the allegations contained in Paragraph 20 of the Complaint to the extent that such allegations relate to or implicate any actions of Defendant. Defendant is without knowledge or information sufficient to admit or deny the remainder of Paragraph 20, and leaves Plaintiff to its proofs.

22. Defendant denies the allegations contained in Paragraph 20 of the Complaint to the extent that such allegations relate to or implicate any actions of Defendant. Defendant is without knowledge or information sufficient to admit or deny the remainder of Paragraph 20, and leaves Plaintiff to its proofs.

23. Defendant denies the allegations contained in Paragraph 20 of the Complaint to the extent that such allegations relate to or implicate any actions of Defendant. Defendant is without knowledge or information sufficient to admit or deny the remainder of Paragraph 20, and leaves Plaintiff to its proofs.

24. Defendant denies the allegations contained in Paragraph 24 of the Complaint.

25. Defendant denies the allegations contained in Paragraph 25 of the Complaint.

26. Defendant denies the allegations contained in Paragraph 26 of the Complaint

**Miscellaneous**

27. Paragraph 27 of the Complaint is a statement of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 27 of the Complaint.

28. Defendant is without knowledge or information sufficient to admit or deny Paragraph 28 of the Complaint.

**COUNT I**  
**Direct Infringement Against Defendant**

29. Defendant repeats and incorporates the preceding responses to the allegations of the Complaint as if they were set forth herein at length.

30. Defendant denies the allegations contained in Paragraph 30 of the Complaint to the extent that such allegations relate to or implicate any actions of Defendant. Defendant is without knowledge or information sufficient to admit or deny the remainder of Paragraph 30, and leaves Plaintiff to its proofs.

31. Defendant denies the allegations contained in Paragraph 31 of the Complaint.

32. Defendant denies the allegations contained in Paragraph 20 of the Complaint.

33. Defendant denies the allegations contained in Paragraph 33 of the Complaint.

34. Defendant denies the allegations contained in Paragraph 34 of the Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Defendant has not infringed Plaintiff's work as alleged in the Complaint, nor has Defendant even attempted to download Plaintiff's work.

**THIRD AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part because the alleged infringement was not caused by a volitional act attributable to Defendant.

**FOURTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part due to Plaintiff's failure to join an indispensable party, insofar as Plaintiff failed to include as a defendant the individual(s) who allegedly downloaded and distributed the alleged files.

**FIFTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part pursuant to the doctrine of unclean hands, particularly because, upon information and belief, Plaintiff is a "copyright troll" engaged in a scheme to "outmaneuver the legal system" while coercing individuals, faced with the paralyzing social stigma of downloading pornographic videos and unaffordable costs of legal defense, to accept unreasonable settlements.

**SIXTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part pursuant to the doctrine of estoppel.

**SEVENTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part pursuant to the doctrine of waiver.

**EIGHTH AFFIRMATIVE DEFENSE**

Defendant has not engaged in or contributed to any infringement of the alleged copyrights.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff cannot demonstrate that Defendant made a complete copy of the work alleged by Plaintiff.

**TENTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part pursuant to the doctrine of misuse of copyright.

**ELEVENTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part by the doctrine of *de minimis non curat lex* a/k/a *de minimis* use. Defendant pleads this defense in the alternative, as Defendant denies having infringed any of Plaintiff's allegedly copyrighted works.

**TWELFTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part under the "safe harbor" doctrine and the Digital Millennium Copyright Act.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff has made no attempt to mitigate any actual or perceived damages, which Defendant expressly denies.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part by license, consent, and acquiescence. This defense is plead in the alternative, as Defendant denies having infringed any of Plaintiff's allegedly copyrighted works.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part by the doctrine of implied license. This defense is plead in the alternative, as Defendant denies having infringed any of Plaintiff's allegedly copyrighted works.

**SIXTEENTH AFFIRMATIVE DEFENSE**

While Defendant denies that Plaintiff has sustained any injury or damages, and while Defendant denies that it has any liability whatsoever, the injuries complained of and the damages sought by Plaintiff were the direct and proximate result of certain independent actions of third parties over whom Defendant has had no control.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's copyrights in and to the intellectual property it claims are invalid and unenforceable because of insufficient originality.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's copyrights in and to the movies it claims are invalid and unenforceable because of its copyright misuse.

**NINETEENTH AFFIRMATIVE DEFENSE**

The statutory damages sought by Plaintiff are unconstitutionally excessive, as applied, and disproportionate to any actual damages that may have been sustained.



**TWENTIETH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part by the doctrine of fair use. This defense is plead in the alternative, as Defendant denies having infringed any of Plaintiff's allegedly copyrighted works.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

There is no substantial similarity between Plaintiff's allegedly copyrighted works and the files identified in the Complaint and exhibits thereto.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

The allegedly infringing files are a product of independent creation.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiff's copyrights in and to the intellectual property it claims are invalid and unenforceable because the Plaintiff obtained them with fraud upon the copyright office.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part due to lack of personal, original and/or subject-matter jurisdiction.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part pursuant to the doctrine of laches.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part because Plaintiff's digital films do not meet the standards for copyrightability and are therefore invalid and unenforceable.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part by the "one satisfaction rule," as equity provides that a plaintiff is entitled to only one satisfaction for a single injury,

thereby barring duplicative recovery from joint copyright infringers, and Plaintiff has already been paid the maximum statutory damages by other infringers.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part because, upon information and belief, Plaintiff or its affiliates intentionally seeded the “honey pot” (or the market) with its digital files with the purpose of generating litigation.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part to the extent Plaintiff claims copyright in intellectual property that is immoral, illegal, or libelous.

**THIRTIETH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to injunctive relief because any alleged injury to Plaintiff is not immediate or irreparable, and Plaintiff has an adequate remedy at law.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part to the extent Plaintiff lacks valid copyright registrations for the intellectual property rights asserted or has not properly or timely registered its intellectual property.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part to the extent Plaintiff has abandoned or forfeited its intellectual property.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

The allegations in the Complaint are barred in whole or in part under the doctrine of scenes à faire.

**RESERVATION OF ADDITIONAL DEFENSES**

Defendant reserves the right to assert such additional affirmative defenses as may become apparent through further investigation or discovery.

**RELIEF REQUESTED**

For these reasons, Defendant respectfully requests that the Court deny all relief sought by Plaintiff in its Complaint, both equitable and legal, award Defendant costs, and grant Defendant such other and further relief, both at law and in equity, to which Defendant is justly entitled.

**WHEREFORE**, Defendant asks this Court to dismiss the Complaint and enter judgment in favor of Defendant.

Respectfully Submitted

ARCHER & GREINER, P.C.  
Attorneys for Defendant

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Dated: September 25, 2017

**CERTIFICATION OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of September, 2017, a true and correct copy of the foregoing was served upon the Plaintiff's counsel of record via ECF.

Respectfully Submitted

ARCHER & GREINER, P.C.  
Attorneys for Defendant

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Dated: September 25, 2017